



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/170610

PRELIMINARY RECITALS

Pursuant to a petition filed December 04, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on January 06, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined liability for a CC overpayment of \$2,765.98 from 1/11/15 to 3/31/15.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was enrolled in the CC program and was employed at [REDACTED]

3. Petitioner left [REDACTED] [REDACTED] [REDACTED] on Medical leave effective 12/24/15. The agency continued to pay CC benefits as it was unaware of the leave.
4. Petitioner was terminated from [REDACTED] 2/9/15.
5. Petitioner became employed at [REDACTED] on 3/30/15.
6. The agency calculated a CC overpayment from 1/11/15 to 3/31/15 in the amount of \$2,765.98.

DISCUSSION

All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. See WI Stat § 49.155(1m). Prior to November 24, 2003, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, WI Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action it has taken was correct given the facts of the case. If the agency meets its burden, the petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

The ultimate question here is whether the petitioner received more child care benefits than to what she was entitled. Not every parent is eligible for W-2 child care services, even if they meet the financial criteria, as there are also nonfinancial eligibility criteria. A parent is eligible for child care services if she needs the care to attend W-2-approved school, to work, or to participate in W-2 activities. See Wis. Stat. §49.155(1m)(a).

Wisconsin Shares child care assistance is only available to individuals that are in Approved Activities. See *Child Care Policy Manual (Manual)*, §1.5.0. Those Approved Activities include: Learnfare, High School, Unsubsidized Employment, Qualified Employers, Pre-Job Training, Apprenticeships, Sheltered Employment, Work Study, Youth Employment, Legitimate Self-Employment, Wisconsin Works or Tribal TANF Employment Position, FSET, Basic Education, Technical College or Course of Study Producing Employment.

Petitioner's only argument at the hearing was that the overpayment is error because the non-participation determined by the Department was time that she spent on medical/family leave from her employer under physician direction.

The program allows a person to hold a spot in a daycare if the parent has an extended absence from the employment. Pursuant to *CC Manual* § 2.8.4 this hold must be requested except in situations of unforeseen illnesses. According to this section, when the absence is due to medical leave documented by a physician, the parent may receive 6 weeks of leave if returning to the same employer within 6 weeks. See *Id.*

In this case, the record reflects that petitioner's physician indicated complications of pregnancy and a medically-recommended leave from employment as of December 17, 2015 (see ex. #2). The employer's termination letter (see ex. #4) indicates that her last day at work was 12/24/14. Additionally, the physician letter dated December 29, 2014 indicates that petitioner remained on

medical leave and was unable to complete child care responsibilities under her physician order. Ultimately, by letter dated February 9, 2015, the employer notified petitioner that it could no longer hold her position open and that due to the expiration of her 6 weeks of medical leave and her non-return to work she was being terminated from employment.

Given this record, I find that the petitioner was on physician ordered medical leave as of 12/24/14. Under the rules of the CC program, petitioner did not need to request that her slot be held because this was due to unforeseen illness. Petitioner's reason for not returning to work is unclear. Petitioner states that she remained in contact with her employer and was medically unable to return. The agency argues that the letter from the employer suggests that the employer did not hear from petitioner after the initiation of leave. The employer representative was not available at hearing for questioning. I find that petitioner's failure to return to work was through no fault of her own and was because of medical inability. Under those circumstances, I find it unreasonable to deny her the 6 weeks of CC to which she would have been entitled if only she returned to the same position. The record demonstrates that petitioner began work at another employer in March 2015 so she does not appear to be shirking responsibilities to comply with her duties to provide for her family or participate in approved program activities. That said, the Manual only provides for 6 weeks of exception in such cases and I have no authority to grant more.

CONCLUSIONS OF LAW

1. Petitioner is entitled to 6 weeks of CC while on medical leave from 12/24/14 to 2/4/15.
2. Petitioner is liable for a CC overpayment from 2/5/15 to 3/31/15.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to redetermine the CC overpayment consistent with the conclusion of law above. This action must be completed within 10 days.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on

those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of January, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 25, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud